

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TAMARA KRUG, Personal Representative of the  
Estate of SARAH ALICE PORZONDEK,  
Deceased,

UNPUBLISHED  
May 20, 2003

Petitioner-Appellant,

v

SHIRLEY CARNAHAN, BERNARD  
PORZONDEK, SANDRA PAULSEN,  
CAMERON PORZONDEK, RICHARD  
PORZONDEK, and MICHAEL PORZONDEK,

No. 239808  
Wayne Probate Court  
LC No. 01-636499-DE

Respondents-Appellees.

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Before: Talbot, P.J., and White and Murray, JJ.

PER CURIAM.

Petitioner appeals the probate court's denial of her petition for admission to probate of the Last Will and Testament of Sarah A. Porzondek, dated March 26, 1996. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner is the granddaughter of the decedent. Her mother, Patricia Cullin, is one of three children of the decedent; the other children are Gerald Porzondek, who predeceased his mother, and Shirley Carnahan. The will provided that one-third of the estate would go to Patricia Cullin, and the remaining two-thirds would go to the decedent's great-grandchildren. No provision was made for Carnahan or Gerald's children. At the same time the will was executed, the decedent executed a revocation of trust, and a deed transferring real estate from the trust to herself individually. The trust had been executed in August 1995, and provided that upon death the assets would be divided one-third to each daughter, and one-third to Gerald's children. Carnahan and Gerald's children objected to the admission of the will based upon a settlement that had been reached in an earlier proceeding and placed on the record March 7, 1996. The will opponents sought summary disposition, which was granted.

The probate court's amended opinion of January 31, 2002 sets forth the pertinent facts and history:

The origin of the issues currently before the Court began in the mid-1990's, with the filing of a Petition for Appointment of a Guardian and Conservator for

decedent, Sarah Alice Porzondek, by her grandson. Following protracted litigation, in which it was obvious to the Court that the parties were acting in their own best interests and not in the interests of their mother/grandmother and that the litigation was having an adverse affect [sic] on decedent, the Court appointed Gregory Krug (decedent's grandson-in-law and the husband of Tamara Krug, Patricia Cullin's daughter) as conservator for her estate. This appointment occurred on March 7, 1996, following a hearing in which it was agreed by all involved that the guardianship petition would be dropped in return for the appointment of a conservator and the understanding that certain assets would remain in the Revocable Living Trust dated August 31, 1995 (the "Trust"), this Trust would be supervised by the Court and that no assets could be sold or transferred without prior court approval. This agreement was placed on the record, reduced to writing and signed by all this [sic] involved. For reasons unknown to the Court, the written agreement ("the Agreement") was never filed with the Court. However, it was and is clear to the Court that all those present at the March 7, 1996, hearing and those who signed the Agreement, understood that no asset in the now supervised Trust or under the new conservatorship could be sold or transferred without prior court approval. It was also clear to the Court at that time, that the persons who petitioned for appointment of a conservator and guardian were only dismissing the petition for guardianship in exchange for the Agreement that decedent's current estate plan would not be altered. Under this estate plan, decedent's property passed equally to her three children, Patricia Cullin, Shirley Carnahan and Gerald Porzondek. [Footnote explaining that Gerald had predeceased his mother, and that his children would take his share.]

Nineteen days later, on March 26, 1996, decedent executed a will which effectively disinherited her daughter, Shirley Carnahan, and the children of a predeceased child, revoked the Trust and executed a quitclaim deed which conveyed real property from the Trust to decedent as sole owner. These documents were executed in clear violation of the Court's March 7, 1996, Order, in clear violation of the written agreement signed by the parties and in clear violation of the understanding between the parties, their attorneys and the Court with regard to decedent's estate plan on March 7, 1996.

The Court would also note that at a later hearing on the sale of real estate, filed by conservator Krug in 1997, no mention was made of the fact that decedent had executed a will, revoked the Trust or executed a quitclaim deed. In fact, it was not until after her death that these documents were brought to light.

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## ANALYSIS

### **Violation of March 7, 1996, Court Order and Written Agreement**

As ordered on the record on March 7, 1996, all of decedent's assets not currently in the Trust, which was to be supervised by the Court, were placed in the conservatorship. As also ordered on the record, none of decedent's assets were to

be sold or transferred without prior court approval. This Order was reduced to a written agreement and signed by the parties or their representative. Nineteen days later, in direct violation of the Order and Agreement of March 7, 1996, decedent, with the assistance of attorney Prebenda: 1) executed a will in which she disinherited her daughter Shirley Carnahan and the Porzondek children; 2) by handwritten note revoked the 1995 Trust; and 3) executed a quitclaim deed transferring ownership of certain real estate from the Trust to herself as sole owner. None of these documents were presented to the Court for approval, as was required by the Order and Agreement of March 7, 1996.

Probate courts have jurisdiction over the estates of protected person, the estates of decedents and the administration of trusts. MCL 600.841; MCL 700.1302(a),(b), and (c). The probate court is also given the power to effectuate the decisions it makes with regard to these matters. MCL 600.847. . . .

In this case, orders were made during the course of guardianship and conservatorship proceedings regarding the handling of decedent's assets, including orders restricting the sale or transfer of real estate and the supervision of her Trust. Further, the parties entered into a written agreement concerning the control of decedent's property. In violation of both the Order and Agreement a will was drafted, the Trust was revoked and ownership of decedent's property was transferred. In furtherance of both the Court's Order and the Agreement of March 7, 1996, the Court will deny admission of the March 26, 1996, will to probate, MCL 700.3102, void the March 26, 1996, revocation of the Trust, MCL 700.7201 and void the quitclaim deed executed March 26, 1996, MCL 600.847.

Petitioner first argues that the court erred in refusing to accept the will for probate. She argues that the decedent was never shown to be incompetent and her right to direct the distribution of her property was not abrogated by the March 7, 1996 agreement, and should not have been abrogated by the court. Petitioner correctly observes that no *signed* order memorializing the March 7 agreement appears to exist. However, the agreement was placed on the record in open court and the order was signed by the parties or their representatives. While petitioner correctly observes that decedent was not restricted by judicial decree from drafting a will, it is clear from the transcript and the "order" that it was agreed that Greg Krug would be appointed conservator, that the decedent's residence and surrounding acreage would be transferred to the August 1995 trust, that the trust would be subject to supervision, and that as a supervised trust, property would not be conveyed without approval by the court. It was represented to the court by the decedent's attorney that Greg Krug was the sole trustee of the trust, when in fact decedent was the sole trustee, and Krug was the successor trustee.

It is clear that the quitclaim deed purporting to transfer the property from the trust to the decedent individually was in direct violation of the agreement. Thus, the court did not err in granting summary disposition revoking the deed. Further, at the time of the March 7 hearing, decedent's other property was subject to the trust, having been listed on Schedule A of the trust. It appears that the property was also made subject to the conservatorship. The trust was placed under the supervision of the court, and it was stated that "as a supervised Trust that property would not be conveyed without approval of the Court." The court was intimately familiar with

the proceedings and the agreements and understandings of the parties. The court did not err in refusing to admit the will to probate.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Christopher M. Murray